

RECEIVED

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

MAR 11 2024

AT 8:30 M
CLERK, U.S. DISTRICT COURT - DNJ

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary)
PLAINTIFF) CIVIL ACTION NO.
) 1:23-cv-26605-JMY
) Hon. John Milton Younge, USDJ
v.)
) Motion Date: To be determined
Nicholas Scutari et al) by the Court
DEFENDANT)
)

NOTICE OF MOTION TO DISPENSE WITH SERVICE OF PLEADINGS
AND OTHER PAPERS UNDER FED. R. CIV. P. 5(c)(1)

TO: CLERK, ALL CAPTIONED PARTIES

Please take notice that, on a date and time to be determined by the Court, Plaintiff Caleb L. McGillvary ("Plaintiff") hereby moves the Court for an order:

1. That service of the pleadings and other papers of the defendants and replies to those pleadings and other papers, if any, need not be made as between the defendants;
2. That any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense be deemed denied or avoided by all other parties;
3. That the filing of any of these types of pleadings and other papers and service of these defensive pleadings and other papers on the plaintiff shall constitute notice of it to all of the other parties;
4. That the electronic notice of filing by the Clerk shall constitute service on all parties except Plaintiff, or those appearing pro se that are not registered for CM/ECF, and that service by mail be dispensed with for all parties but Plaintiff and those appearing pro se; and
5. That, pursuant to "4", Plaintiff's documents shall be deemed to have been served upon filing with the Clerk pursuant to the

prison mailbox rule, subject to the time limits on responses thereto by Defendants being measured instead by the date of notice of electronic filing

As grounds for this motion, Plaintiff relies upon his attached Declaration and Memorandum in support of this motion.

A proposed form of order is attached.

Date: 3/11/24


Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ
08625-0861

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary)
PLAINTIFF) CIVIL ACTION NO.
) 1:23-cv-26605-JMY
) Hon. John Milton Younge, USDJ
V.)
) Motion Date: To be determined
Nicholas Scutari et al) by the Court
DEFENDANT)
)

MOTION TO DISPENSE WITH SERVICE OF PLEADINGS
AND OTHER PAPERS UNDER FED. R. CIV. P. 5(c)(1)

Relief Sought

Plaintiff Caleb L. McGillvary ("Plaintiff") hereby moves
the Court pursuant to Fed. R. Civ. P. 5(c)(1) for an order:

1. That service of the pleadings and other papers of
the defendants and replies to those pleadings and other papers,
if any, need not be made as between the defendants;

2. That any crossclaim, counterclaim, or matter
constituting an avoidance or affirmative defense be deemed denied
or avoided by all other parties;

3. That the filing of any of these types of pleadings
and other papers and service of these defensive pleadings and
other papers on the plaintiff shall constitute notice of it
to all of the other parties;

4. That the electronic notice of filing by the Clerk

shall constitute service on all parties except Plaintiff, or those appearing pro se that are not registered for CM/ECF, and that service by mail be dispensed with for all parties but Plaintiff and those appearing pro se; and

5. That, pursuant to "4", Plaintiff's documents shall be deemed to have been served upon filing with the Clerk pursuant to the prison mailbox rule, subject to the time limits on responses thereto by Defendants being measured instead by the date of notice of electronic filing

Grounds For Relief

As grounds for this motion, incorporates by reference his attached Declaration and avers that it shows:

1.) This motion is expressly authorized by Rule 5(c)(1) when, as in this case, there is an unusually large number of defendants.

2.) There are 80 Defendants named in my Complaint. All of these defendants are likely to be filing stock defensive pleadings and other papers, all are likely to name each other in crossclaims for contribution, many may counterclaim against the Plaintiff, and all are almost certain to be asserting numerous but standard affirmative defenses.

3.) A marathon of pleadings and other papers, service of pleadings and other papers, responses, and service of responses would not be helpful or productive and would impose a great burden on all of the parties to this action.

4.) All of the issues joined by the pleadings and other papers may be settled more economically and efficiently in a

pretrial order made after the parties have had an opportunity to define the available evidence and the actual contentions that will be asserted at trial.

5. Plaintiff is a self-representing indigent litigant in State custody, and service of all documents upon him in paper format, by mail, is necessary. The U.S. Marshal has been appointed to serve all process on behalf of Plaintiff pursuant to 28 U.S.C. 1915. Defendants represented by counsel, however, are mandatorily participating in the Case Management/Electronic Court Filing system ("CM/ECF").

6. Each time the Clerk receives one of Plaintiff's paper filings via mail, the Clerk files Plaintiff's document into the CM/ECF system. See DNJ L.Civ.R. 5.2.2 ("All civil ... cases and documents filed in this Court, will be entered into the Court's ECF System in accordance with these Procedures."). Upon entry of a document in CM/ECF, notice of electronic filing thereof ("NEF"); is automatically thereby sent to all CM/ECF-participating parties; entitling them to a free look at the document on PACER. See DNJ L.Civ.R. 5.2.1(d) ("NEF is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system..."). This NEF constitutes service upon all such parties. See DNJ L.Civ.R. 5.2.14(b) (1) ("Transmission of the NEF constitutes service of the filed document on Filing Users").

7. Plaintiff is considered by the prison mailbox rule to have filed a document with the Court on the date he places it in the institutional mailing system where he is incarcerated

at NJ State Prison, 3rd & Federal Streets, Trenton, NJ 08625-0861.

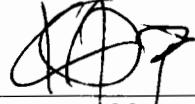
8. For the foregoing reasons, and for all the reasons in my attached memorandum, it is in the interest of justice and judicial economy for service of mail to be dispensed with for all parties but Plaintiff and those appearing pro se who are not CM/ECF participants, and for an order that service upon CM/ECF-participant parties be effected by the Clerk electronically pursuant to DNJ L.Civ.R. 5.2.14(b)(1), effective on the date of filing pursuant to prison mailbox rule.

Record For Motion

This motion is based on the pleadings and other papers and papers on file in this action, this motion, the attached notice of motion, the attached declaration in support of this motion, and whatever evidence and argument is presented at the hearing of this motion.

Date: 3/1/24

Respectfully Submitted,



Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ
08625-0861

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary)
PLAINTIFF) CIVIL ACTION NO.
) 1:23-cv-26605-JMY
) Hon. John Milton Younge, USDJ
V.)
) Motion Date: To be determined
Nicholas Scutari et al) by the Court
DEFENDANT)
)

DECLARATION IN SUPPORT OF MOTION TO DISPENSE WITH SERVICE OF
PLEADINGS AND OTHER PAPERS UNDER FED. R. CIV. P. 5(c)(1)

I, Caleb L. McGillvary ("Plaintiff"), hereby declare
pursuant to 28 U.S.C. 1746 the following:

1.) I am the pro se plaintiff in the above-captioned
matter.

2.) There are 80 Defendants named in my Complaint. All
of these defendants are likely to be filing stock defensive
pleadings and other papers, all are likely to name each other
in crossclaims for contribution, many may counterclaim against
the Plaintiff, and all are almost certain to be asserting
numerous but standard affirmative defenses.

3.) A marathon of pleadings and other papers, service of
pleadings and other papers, responses, and service of responses
would not be helpful or productive and would impose a great
burden on all of the parties to this action.

4.) All of the issues joined by the pleadings and other papers may be settled more economically and efficiently in a pretrial order made after the parties have had an opportunity to define the available evidence and the actual contentions that will be asserted at trial.

5. Plaintiff is a self-representing indigent litigant in State custody, and service of all documents upon him in paper format, by mail, is necessary. The U.S. Marshal has been appointed to serve all process on behalf of Plaintiff pursuant to 28 U.S.C. 1915. Defendants represented by counsel, however, are mandatorily participating in the Case Management/Electronic Court Filing system ("CM/ECF").

6. Each time the Clerk receives one of Plaintiff's paper filings via mail, the Clerk files Plaintiff's document into the CM/ECF system. See DNJ L.Civ.R. 5.2.2 ("All civil ... cases and documents filed in this Court, will be entered into the Court's ECF System in accordance with these Procedures."). Upon entry of a document in CM/ECF, notice of electronic filing thereof ("NEF"); is automatically thereby sent to all CM/ECF-participating parties; entitling them to a free look at the document on PACER. See DNJ L.Civ.R. 5.2.1(d) ("NEF is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system..."). This NEF constitutes service upon all such parties. See DNJ L.Civ.R. 5.2.14(b)(1) ("Transmission of the NEF constitutes service of the filed document on Filing Users").

7. Plaintiff is considered by the prison mailbox rule to

have filed a document with the Court on the date he places it in the institutional mailing system where he is incarcerated at NJ State Prison, 3rd & Federal Streets, Trenton, NJ 08625-0861.

8. For the foregoing reasons, and for all the reasons in my attached memorandum, it is in the interest of justice and judicial economy for service of mail to be dispensed with for all parties but Plaintiff and those appearing pro se who are not CM/ECF participants, and for an order that service upon CM/ECF-participant parties be effected by the Clerk electronically pursuant to DNJ L.Civ.R. 5.2.14(b)(1), effective on the date of filing pursuant to prison mailbox rule.

I declare under penalty of perjury that the foregoing statements are true and accurate.

Executed this 15 day of MARCH, 2024 

Caleb L. McGillvary, ProSe
#1222665/SBI#102317GNJSP
PO Box 861, Trenton, NJ08625

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Caleb L. McGillvary) CIVIL ACTION NO.
PLAINTIFF) 1:23-cv-26605-JMY
v.) Hon. John Milton Younge, USDJ
Nicholas Scutari et al) Motion Date: To be determined
DEFENDANT) by the Court
)
)

ORDER

THIS MATTER having been opened to the Court on motion by Plaintiff Caleb L. McGillvary pursuant to Fed. R. Civ. P. 5(c)(1) for an order:

1. That service of the pleadings and other papers of the defendants and replies to those pleadings and other papers, if any, need not be made as between the defendants;
2. That any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense be deemed denied or avoided by all other parties;
3. That the filing of any of these types of pleadings and other papers and service of these defensive pleadings and other papers on the plaintiff shall constitute notice of it to all of the other parties;
4. That the electronic notice of filing by the Clerk shall constitute service on all parties except Plaintiff, or those appearing pro se that are not registered for CM/ECF, and that service by mail be dispensed with for all parties but Plaintiff and those appearing pro se; and
5. That, pursuant to "4", Plaintiff's documents shall be deemed to have been served upon filing with the Clerk pursuant to the prison mailbox rule, subject to the time limits on responses thereto by Defendants being measured instead by the date of

notice of electronic filing;

and the Court having considered the papers submitted and the arguments therein, and FOR GOOD CAUSE SHOWN

It is on this ____ Day of _____, 20____

ORDERED that Plaintiff's motion is hereby GRANTED; and it is further

ORDERED:

1. That service of the pleadings and other papers of the defendants and replies to those pleadings and other papers, if any, need not be made as between the defendants;

2. That any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense be deemed denied or avoided by all other parties;

3. That the filing of any of these types of pleadings and other papers and service of these defensive pleadings and other papers on the plaintiff shall constitute notice of it to all of the other parties;

4. That the electronic notice of filing by the Clerk shall constitute service on all parties except Plaintiff, or those appearing pro se that are not registered for CM/ECF, and that service by mail be dispensed with for all parties but Plaintiff and those appearing pro se; and

5. That, pursuant to "4", Plaintiff's documents shall be deemed to have been served upon filing with the Clerk pursuant to the prison mailbox rule, subject to the time limits on responses thereto by Defendants being measured instead by the date of notice of electronic filing; and it is further

ORDERED that a copy of this order be served upon all parties appearing in this matter within 7 days of this order

Hon. John Milton Younge, U.S.D.J.

Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ 08625

March 11, 2024

Clerk, US Dist. Ct. - DNJ
US Courthouse
4th and Cooper Streets
Camden, NJ 08101-2797

RE: Caleb L. McGillvary v. Nicholas Scutari et al
Civil Action No. 1:23-cv-26605-JMY
Hon. John Milton Younge, U.S.D.J.

Dear Clerk;

Please find enclosed and file onto the docket the original of my notice, declaration, proposed order, and motion in support of my motion to dispense with service of pleadings and other papers under Rule 5(c)(1); and proof of service thereof; in the above-captioned matter.

Kind Regards,


Caleb L. McGillvary
In Propria Persona

ENCL:
CC: FILE

RECEIVED

MAR 11 2024

AT 8:30 _____ M
CLERK, U.S. DISTRICT COURT - DNJ

PROOF OF SERVICE

I, Caleb L. McGillvary, declare pursuant to 28 U.S.C. 1746 that on today's date, I placed in the institutional mailing system here where I'm incarcerated at NJ State Prison 3rd & Federal Streets Trenton, NJ 08625; with First Class Postage prepaid to be sent via USPS Mail; the original of my notice, declaration, proposed order, and motion in support of my motion to dispense with service of pleadings and other papers under Rule 5(c)(1) in the above-captioned matter. to the Clerk of the District Court at USDC-DNJ US Courthouse 4th & Cooper Sts. Camden, NJ 08101-2797. No Defendants have yet appeared in this matter, to my knowledge.

I hereby invoke the prison mailbox rule.

I declare under penalty of perjury that the foregoing statements made by me are true and accurate.

Executed this 15th Day of MARCH, 2024

[Handwritten Signature]
Caleb L. McGillvary, Pro Se
#1222665/SBI#102317G NJSP
PO Box 861 Trenton, NJ
08625-0861

APR 20 2024
CLERK, U.S. DISTRICT COURT - D.N.J.
W

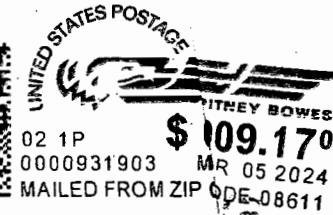
RECEIVED
U.S. DISTRICT COURT - D.N.J.

C MCGUINNAN
#1222665/SB1#1023174
NJSPP Po Box 861
TRENTON, NJ
08625

CERTIFIED MAIL



7012 0470 0002 1141 0963



RECEIVED

MAR 11 2024

AT 8:30
CLERK, U.S. DISTRICT COURT - DN
M

CLERK
U.S. DIST. CT. - DN
US COURTHOUSE
4TH & COOPER STS.
CAMDEN, NJ

08101-0002 2797

LEGAL MA